

SCHOOLS: It is not permissible for a school board, by a majority vote, to use the \$50.00 deduction to be added to the equalization quota to liquidate indebtedness in the building fund.

April 2, 1938

Mr. Roy W. Starling
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Dear Mr. Starling:

This department is in receipt of your letter of March 28th, wherein you request an opinion involving two questions, the first question is as follows:

I.

"Is the County Treasurer entitled to commissions on moneys received from the state and paid out in one lump sum by the County Treasurer, by check, to the Treasurer of a City, Town or Consolidated School District, the county court having made an order allowing the County Treasurer Compensation, in addition to the salary, equal to one half of one per cent of all school moneys disbursed by him, in accordance with the provisions of Sec. 9266 R. S. 1929?"

At the outset it appears that this department on June 7, 1935 in an opinion rendered to Hon. Nat B. Rieger, prosecuting attorney of Adair County, in which it was held that under an interpretation of the statutes it was the duty of the county collector to pay direct to the treasurer of the state, town or consolidated school district all moneys which said districts were entitled. Copy of the opinion is herewith enclosed. This, in effect, would appear to dispose of the question which you present. However, we are enclosing opinions bearing on the question of the compensation or commission of the treasurer for school moneys disbursed, one to Hon. Forrest Smith, State Auditor, Jefferson City, Missouri, and the other to Hon. Thomas A. Mathews, Prosecuting Attorney at St. Francois County, copies of which is herewith enclosed.

II.

The second question is as follows:

"Is it permissible for a school board, by majority vote, to use the Fifty Dollar deduction to be added to the equalization quota of the

district by virtue of Sec. 9270-q, to liquidate indebtedness in the building fund of the district according to the last proviso of Sec. 9312 R. S. 1929? In other words, is this money paid by the State construed to be 'tuition' so far designating what money may be used in the building fund so far as the last named section is concerned?"

Section 9270-q, Laws of Missouri 1935, formerly Section 16, page 351, contains the provisions relative to the sum of \$50.00 to be added to the equalization quota. The pertinent part of said section is as follows:

"The board of directors of each and every school district in this state that does not maintain an approved high school offering work through the twelfth grade shall pay the tuition of each and every pupil resident therein who has completed the work of the highest grade offered in the school or schools of said district and attends an approved high school in another district of the same or an adjoining county, or an approved high school maintained in connection with one of the state institutions of higher learning, where work of one or more higher grades is offered; but the rate of tuition paid shall not exceed the per pupil cost of maintaining the school attended, less a deduction at the rate of fifty dollars for the entire term, which deduction shall be added to the equalization quota of the district maintaining the school attended, as calculated for the ensuing year, if said district is entitled to an equalization quota; if the district maintaining the school attended is not entitled to an equalization quota, then such deduction shall be added to the teacher quota of said district, as calculated for the ensuing year; but the attendance

of such pupils shall not be counted in determining the teaching units of the school attended; and the cost of maintaining the school attended shall be defined as the amount spent for teachers' wages and incidental purposes."

In an opinion rendered by this department on September 2, 1933 was held to the effect that all state money must be placed to the credit of the teachers' fund and cannot lawfully be used for any other purpose. Likewise in an opinion on February 7, 1935 was held by this department to the effect that:

"Repairs and replacements to the building shall be paid out of the building fund, and if there is not enough money in the building fund, the sum shall be transferred out of the incidental fund."

Section 9312, referred to in your letter, is herewith quoted:

"The treasurer shall open an account for each fund specified in this section, and all moneys received from the state, county and township funds, and all moneys derived from the taxation for teachers' wages, and all tuition fees, shall be placed to the credit of the 'teachers' fund'; the money derived from taxation for incidental expenses shall be credited to the 'incidental fund;'

all money derived from taxation for building purposes, from the sale of school site, schoolhouse or school furniture, from insurance, from sale of bonds, from sinking fund and interest, shall be placed to the credit of the 'building fund;'

and all moneys not herein specified that now belong to any school district, or that may hereafter be received by such school district, shall be placed to the credit of the 'teachers' fund' of such school district. No treasurer shall honor any warrant unless it be in the proper form and upon the appropriate fund; and each and every warrant shall be paid from its

appropriate fund, and no partial payment shall be made upon any school warrant, nor shall any interest be paid upon any such warrant: Provided, that the board of directors shall have the power to transfer from the incidentals to the building fund such sum as may be necessary for the ordinary repairs of school property: Provided further, that in the event of a balance remaining in the building fund after the purpose for which said fund was levied is accomplished, the said board shall have the power to transfer such unexpended balance to the incidental fund: Provided further, that by a majority vote of the school board tuition fees may be used to liquidate indebtedness accrued in the building fund."

By the provisions of Section 9312, all moneys derived from the state shall be placed to the credit of the teachers' fund. By further provisions of the section, tuition fees may be used to liquidate indebtedness accrued in the building fund but there is no provision authorizing the Board to in anywise transfer or use the funds in the teachers' fund for any other purpose than that authorized by this section.

In the decision of Consolidated School District #6 vs. Shawhan, 273 S. W. 182, the court has said:

"That the powers of the board of directors of school district are limited to those specially delegated. Directors are personally liable for misapplication of moneys in teachers' fund for purposes other than paying the teachers; not withstanding they act in good faith and without wilfull intent."

CONCLUSION

We are, therefore, of the opinion that the money derived from the state under the equalization quota by virtue of Section 9270-q, cannot be used in the building fund.

Respectfully submitted,

APPROVED:

OLLIVER W. NOLEN
Assistant Attorney General.